November 4, 1966 CP:JMC:dlg

The Honorable J. Skelly Wright
Circuit Judge
United States Court of Appeals for the
District of Columbia Circuit
United States Court House
3rd and John Marshal Place, N. W.
Washington, D. C.

In re: Hobson, et al., v. Hansen, et al.
Civil Action No. 82-66

Dear Judge Wright:

I am in receipt of a copy of a letter dated October 26, 1966, from William M. Kunstler, Esq., counsel for plaintiffs, addressed to you commenting upon certain exhibits that presently await your ruling in the case referenced. That letter also cites cases and presents argument of counsel. I am at a loss to understand why plaintiffs did not file a pleading in support of their legal position. It is not my experience that legal argument is expressed to the Court by means of ordinary communication; nor do I believe it proper for me to write a letter to the Court in rebuttal. Furthermore, I do not think a formal opposition to a mere letter to be appropriate. Therefore, it is my current intention, unless I am informed to the contrary by the Court, to disregard this attempt by plaintiffs to extend their legal contentions by completely novel means.

Very truly yours,

JAMES M. CASHMAN
Assistant Corporation Counsel, D. C.

cc: William M. Kunstler, Esq.

November 4, 1969 CP:JMC:dlg

The Honorable J. Skelly Wright
Circuit Judge
United States Court of Appeals for the
District of Columbia Circuit
United States Court House
3rd and John Marshal Place, N. W.
Washington, D. C.

In re: Hobson, et al., v. Hansen, et al.
Civil Action No. 82-69

Dear Judge Wright:

I am in receipt of a copy of a letter dated October 29, 1969, from William M. Kunstler, Esq., counsel for plaintiffs, addressed to you commenting upon certain exhibits that presently await your ruling in the case referenced. That letter also cites cases and presents argument of counsel. I am at a loss to understand why plaintiffs did not file a pleading in support of their legal position. If is not my experience that legal argument is expressed to the Court by means of ordinary communication; nor do I believe it proper for me to write a letter to the Court in rebuttal. Furthermore, I do not think a formal opposition to a mere letter to be appropriate. Therefore, it is my current intention, unless I am informed to the contrary by the Court, to disregard this attempt by plaintiffs to extend their legal contentions by completely novel means.

Very truly yours,

JAMES M. CARNEMAN
Assistant Corporation Counsel, D. C.

cc: William M. Kunstler, Esq.

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MICHAEL J. KUNSTLER
STEVEN J. HYMAN

ARTHUR KINOY
OF COUNSEL TO THE FIRM

January 5, 1968

Hon. J. Skelly Wright,
United States Circuit Judge,
United States Court House,
Washington, D.C.

Re: Hobson v. Hansen

Dear Judge Wright:

I am enclosing herewith an objection of sorts to the motion of Defendant Carl C. Smuck and the proposed intervenors in the above action.

If an early date is set, I would appreciate some consideration of my schedule for the next two or three weeks. I will be in Houston, Texas on January 10th and 11th for the en banc hearings of the Fifth Circuit which will occupy those two days. On the 12th and part of the 13th, I must be in Louisville, Kentucky, to consult with clients on pending litigation. On January 19th, I am scheduled to argue a grand jury challenge in the Eastern District of Louisiana. I have a criminal trial scheduled in New York on January 26.

Thank you very much for your taking the above schedule into consideration when setting a date for any hearing in this matter.

Respectfully yours,

William M. Kunstler

wmk/st
encl (1)

THOMAS S. JACKSON
ROBERT M. GRAY
JOHN L. LASKEY
FRANCIS L. YOUNG, JR.
AUSTIN P. FRUM
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LEWIS H. BARNES
COUNSEL

July 18, 1967

Honorable J. Skelly Wright, Judge
United States Court of Appeals for the
District of Columbia Circuit
United States Court House
Constitution Avenue and John Marshall Place, N. W.
Washington, D. C. 20001

In re: Hobson, et al. v. Hansen, et al.
Civil Action No. 82-66

Dear Judge Wright:

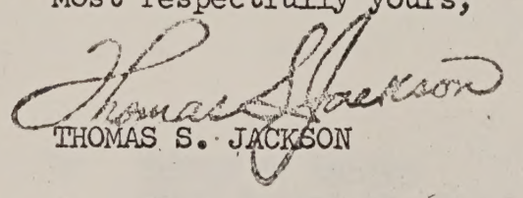
There will have been forwarded to you by the Clerk, we presume, a motion to intervene filed on behalf of Carl F. Hansen; and it is likely that, by the time you receive this letter, there will be one or more other motions to intervene.

We think that the filing of a motion to intervene under a claim of right has the effect of a notice of appeal at least as of the date of filing, that the time for noting an appeal has been extended by fourteen days at least by the notice of appeal by named defendants, and the true time for appeal is sixty days from June 19, 1967 since the Judges are named defendants and are officers of the United States. Nevertheless, out of an abundance of caution, we respectfully request, and would be grateful, if we could arrange for a hearing on the motion or motions to intervene at the earliest practical date. One other reason for our request for a prompt hearing is that both Mr. Campbell and I will be leaving for Hawaii to attend the American Bar Association meeting there as of about the first of August.

We are sending a copy of this letter which we trust will constitute a formal request for an early hearing to William M. Kunstler, Esq. and Jerry D. Anker, Esq., attorneys for plaintiffs; Honorable Charles T. Duncan, Corporation Counsel for the District of Columbia; and

David G. Bress, Esq., United States Attorney for the District of Columbia.

Most respectfully yours,



THOMAS S. JACKSON

TSJ:mu

CC: William M. Kunstler, Esq.
Jerry D. Anker, Esq.
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

Hon. Charles T. Duncan
Corporation Counsel for the District of Columbia
District Building
14th and E Streets, N. W.
Washington, D. C 20004

David G. Bress, Esq.
United States Attorney for the District of Columbia
United States Court House
Washington, D. C. 20001

Filed 10-24-67

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
DISTRICT BUILDING
WASHINGTON, D. C. 20004

IN REPLY REFER TO:

October 6, 1967

William M. Kunstler, Esquire
Law Offices of
Kunstler & Kunstler
511 Fifth Avenue
New York, New York 10017

Re: Hobson v. Hansen
Civil Action No. 82-66

Dear Mr. Kunstler:

A copy of the report of the Board of Education in the above matter was deposited with the guard at the United States Court House in the District of Columbia prior to midnight on October 2, 1967. The brief pleadings submitted with the report included a certificate of service showing service on you at your local office on October 3, 1967. Two attempts were made to hand deliver the report to Mr. William Higgs at 618 D Street, N.E., Washington, D.C., pursuant to a praecipe concerning service which I understand had been filed previously in this case. Mr. Higgs was finally served after telephonic conversation with him in the afternoon of October 3. I need hardly be reminded that this is an adversary proceeding and I am well aware of obligations to opposing counsel in this regard.

As I have indicated to you previously, I am entirely amenable to your suggestion that we join in an invitation to invite the United States to enter this litigation, and will be pleased to cooperate in any way you suggest to bring this about. It is my understanding from press reports that the Department of Justice is independently considering intervention but has not as yet made a final decision.

Sincerely yours,

Charles T. Duncan

CHARLES T. DUNCAN
Corporation Counsel, D.C.

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004

October 6, 1967

William M. Kunstler, Esquire
Law Offices of
Kunstler & Kunstler
511 Fifth Avenue
New York, New York 10017

Re: Hobson v. Hansen
Civil Action No. 82-66

Dear Mr. Kunstler:

A copy of the report of the Board of Education in the above matter was deposited with the guard at the United States District Court House in the District of Columbia prior to midnight on October 5, 1967. The brief pleadings submitted with the report included a certificate of service showing service on you at your local office on October 3, 1967. Two attempts were made to hand deliver the report to Mr. William Bigge at 815 G Street, N.W., Washington, D.C., pursuant to a procedure long existing whereby I understand had been filed previously in this case. Mr. Bigge was finally served after telephonic conversation with him in the afternoon of October 3. I need hardly be reminded that this is an adversary proceeding and I am well aware of obligations to opposing counsel in this regard.

As I have indicated to you previously, I am entirely amenable to your suggestion that we join in an invitation to invite the United States to enter this litigation, and will be pleased to cooperate in any way you suggest to bring this about. It is my understanding from press reports that the Department of Justice is independently considering intervention but has not as yet made a final decision.

Sincerely yours,

CHARLES T. DUNCAN
Corporation Counsel, D.C.

REPORT OF DEFENDANTS IN THE CASE OF HOBSON VS. HANSEN, ET AL.

OCTOBER 2, 1967

On June 19, 1967, the case of Hobson vs. Hansen, et al. was decided. This decision contained the following orders:

1. That the defendants be permanently enjoined from discriminating on the basis of racial or economic status in the operation of the District of Columbia School System

2. That the defendants be permanently enjoined from operating the track system in the District of Columbia Public Schools

3. That on October 2, 1967 the defendants file in the record in this case for approval by the Court a plan of pupil assignment complying with the principles announced in the Court's opinion

4. That the defendants beginning with the school year 1967-68 provide transportation for volunteering children on overcrowded school districts east of Rock Creek Park to underpopulated schools west of the Park

5. That beginning with the school year 1967-68 the following optional zones be abolished: Wilson - Western - Roosevelt; Cardozo - Western; Dunbar - Western; Gordon - Macfarland; Gordon - Banneker; Powell - Hearst

6. That the defendants beginning with the school year 1967-68 provide substantial teacher integration in the faculty of each school

7. That on October 2, 1967 the defendants file in the record in this case for approval by the Court a plan of teacher assignment which will fully integrate the faculty of each school pursuant to the principles announced in the Court's opinion and the instructions contained in the part styled Remedy thereof.

Additionally, the Court decreed that the defendants file reports showing their compliance with these orders on October 2, 1967.

Subsequently, the Court granted the petition of the defendants in which they asked for additional time in order to prepare reports on long range pupil assignment plans and long range teacher assignment plans.

Thus, this report is submitted to the Court as evidence of the defendants' compliance with all of its orders with these two exceptions. Specifically it is intended to show that the defendants have in fact:

1. Adopted a policy in keeping with the Court's order permanently enjoining them from discriminating on the basis of racial or economic status in the operation of the school system

2. Abolished the track system and reorganized all elementary and secondary schools to facilitate a system-wide move to a program of individualized instruction

3. Initiated a plan for transporting volunteering children from over-populated schools east of Rock Creek Park to underpopulated schools west of Rock Creek Park

4. Abolished all optional zones including: Wilson - Western - Roosevelt; Cardozo - Western; Dunbar - Western; Gordon - Macfarland; Gordon - Banneker; and Powell - Hearst

5. Promoted the integration of faculties by assigning new teachers to schools on a color conscious basis, by seeking volunteers willing to transfer to schools where faculties were predominantly of the opposite race, and by assigning teachers needed for the increased enrollments west of Rock Creek Park on a color conscious basis.

Chronology of Actions of Defendants Indicating Compliance With the Court's Orders

1. On July 1, 1967, the current Board of Education met for its initial organizational meeting. It contained three new members. (See attached minutes of first organizational meeting of Board of Education.)

2. On July 1, 1967, the Board of Education met a second time "for the purpose of discussing the position of the Board relative to Judge Wright's decision and to take action thereon." In this meeting the Board:

   a. Carried the motion "that the Board of Education of the District of Columbia not appeal the decision of Judge Wright in the case of Hobson vs. Hansen, et al; that the Corporation Counsel, as lawyers for the Board of Education, be empowered to seek and to take proper steps to amend the decree as issued by Judge Wright so as to allow the Board sufficient time to rely upon reliable educators as consultants, said time of extension to be January 2, 1968."

b. Carried the motion "that Dr. Hansen as an employee of the District of Columbia Board of Education, be ordered not to take any action inconsistent with the motion just passed by the Board; that is to say, not appeal the decision rendered in the case of Hobson vs. Hansen, et al." (See attached minutes of second special meeting of Board of Education)

3. On July 8, 1967, the Board of Education approved the retirement of Dr. Hansen and directed Benjamin J. Henley to assume the position of Acting Superintendent, effective August 1, 1967. (See attached minutes of third special meeting of Board of Education)

4. On July 10, 1967, the Board of Education scheduled a special meeting for July 14, 1967 to consider "steps to be taken to implement the decree of Judge Wright." (See attached minutes of fourth special meeting of the Board of Education)

5. On July 14, 1967, the Board of Education agreed to draft an overall statement of policy and directed the administration to develop plans for the implementation of the Wright decree through the following motion made by Mrs. Allen:

"I move (1) that the responsible acting superintendent, deputy superintendent, or acting deputy superintendent bring in to this Board two weeks from tonight for consideration, progress reports on cooperative staff planning accomplished for the implementation of the Wright decree, including reports on the following preliminary plans:

a. substitute structure for track system
b. long range pupil assignment plan
c. plan for transporting volunteering children to underpopulated schools west of Rock Creek Park
d. preliminary planning in regard to future design and location of new schools.
e. preliminary plans for substantive, comprehensive compensatory education
f. plans for establishment of new zones to replace abandoned optional zones
g. plan for substantial teacher integration for fall, particularly with newly appointed teachers, and preliminary long range plans.

"(2) that the President of the Board address a request to Secretary of the Department of Health, Education and Welfare and the U. S. Commissioner of Education for assistance of the civil rights compliance staff and education program officers in developing plans to implement the Wright decree and in developing plans for developing quality, integrated education and that the President arrange for outside consultants as necessary.

"(3) that the President address a request to suburban school districts for conferences to investigate possibilities for cooperative efforts for purposes of racial integration." (See attached minutes of fifth special meeting of Board of Education)

6. On July 28, 1967, the Board of Education adopted the following policy statement entitled "Point of View":

THE PROBLEM

The District of Columbia School Board serves a community besieged by economic, social, racial, political, and educational problems of the severest magnitude. There are no easy answers to our problem. It is only through dedicated and combined efforts that we dare hope to maximize here and now the role of public education in meeting the problem in such a manner that we will provide quality education for all children in the Nation's Capital. The School Board in its effort to establish policy for public education during this period of crisis solicits and welcomes the cooperation of the many social, civic, religious, educational, and other special interest groups in the community in fulfilling our goals.

Education of Our Children

The Board of Education pledges itself to the goal of providing maximum development of every child in the school system, regardless of that child's racial, economic, or religious background or his physical location in the City. We represent no special interest groups, and we are obligated only to the children in our schools. We believe that every child has an inalienable right to the intellectual, moral, and vocational tools to enable him to contribute to our society. The community likewise has the obligation to provide every child with these tools.

Integration and Education

The Board endorses the concept of maximum feasible integration of our students--racial, economic, cultural and social--because it believes that integrated education is consistent with quality education. It pledges to capitalize upon the unparalleled richness of resources available in the Nation's Capital by full utilization of properly prepared volunteers. The Board faces up to the reality, however, that the flight to the suburbs of the middle class white community has reduced to insignificance the option of racial integration of students in regular classroom situations, except possibly across cooperating school district boundary lines. The almost totally Negro school population constitutes the fact of our life. We must explore every possibility, however, of devising ways in which the association of children across ethnic, economic, or cultural lines may take place--on trips, in camps, in special activities, in cultural activities, or in laboratory situations, for example--on the assumption

that in our pluralistic society we do all children a disservice to isolate them from reality. We believe that the schools must provide sufficient common experiences to promote mutual understanding and respect. The choice of the Board is between a blinding desire for integration or quality education for the children we have in this City. We elect to prove that the overwhelming majority of children of any background can learn if we but provide the proper circumstances.

Transportation

The Board affirms its intent, in response to the educational needs of the school population, to transport at public expense volunteering children from overcrowded classrooms and less than full day programs to empty seats wherever they are. Pupils should be thoroughly integrated in classes in "receiving" schools, and the administration should facilitate pupil participation. Additional services should be added to "receiving" schools as necessary in order to assure maximum acceptance. School community programs must be organized for parents and communities in both "sending" and "receiving" areas, with emphasis on joint ventures. Pupils entering "receiving" schools should move with their new classmates to higher schools.

Compensatory Education

The Board affirms the policy of saturating the educationally deprived children with earlier education, special services, and sufficient learning situations to compensate for the inadequacies with which society has afflicted them. These special services should include but not necessarily be limited to Federal or foundation programs and should be such that they are not merely tacked on to an inadequate regular day program. It is also our policy to provide for the average child and the exceptional child maximum growth and self-fulfillment opportunities, recognizing differing abilities but equal right to full development. The Board further pledges itself to promoting vocational, technical, and adult education programs relevant to the needs and problems of our community.

Personnel

The Board endorses the concept of maximum racial integration of teaching staffs. Appointments, promotions, and ratings of the officers and employees of the Board, moreover, shall be predicated solely on merit and not upon race or color.

Construction - Inservice Training

We accept the need for the finest and most modern facilities and equipment which researchers can provide. But we acknowledge that no amount of brick or hardware can supplant inspired teaching. We accept our responsibility to see that teacher and administrative preparation is related to the children being taught and that the most experienced, best prepared, most empathetic teachers one can find of whatever race are provided where they are needed the most. We accept our obligation to provide massive inservice training for teachers. We beg of the educational community that they look again at the needs of the individual child and, as far as possible, meet those needs. We urge that the shackles of traditionalism, status quo, isolation from the community, and professional inertia be thrown off. We encourage our administrators at all levels to innovate and to create new ways of organizing and conducting educational programs--to reach and to teach. We insist upon teacher, principal, and community participation in the planning and budgeting processes for our City's schools. For this is a new day of change in Washington, and "business as usual" is a dead philosophy.

The promotion of integration shall be one of the major concerns in the locating of new schools and in defining school districts. The Board urges that while rapid transit plans and city renewal plans are being developed that the school administration will actively participate in order that schools and educational parks proposed for the future may be located in conjunction with such plans. It is the policy of the Board to encourage maximum community participation in the planning stages of new major school construction and to be advised by recommendations from the community.

Finances

The problems of financing the kind of education necessary to effect change in our society are overwhelming, particularly when such finances are not under our control. The Board pledges itself to seek additional financial support beyond any previously publicly proposed in order that we might better carry out our responsibilities to the children in the District of Columbia.

CALL FOR COOPERATION

We ask for the support of the community as we sincerely attempt to reshape the image of the District of Columbia public school system and as we change our society by the products of our system. It is possible to change our schools from the shame of the Nation to its pride. The community with the leadership of the Board can make this change a reality.

It, also, approved the Acting Superintendent's report to the Board of Education which contained the administration's proposals for the implementation of the Wright decree. The proposals pertinent to this report are as follows:

I. SUBSTITUTE STRUCTURE FOR TRACK SYSTEM

A. The administration will direct all elementary and secondary school principals to abandon the track system immediately.

B. Reorganization of the schools will be based on the following principles:

1. Schools will be organized in keeping with the D. C. Schools' Philosophy of Education which states in part, "We hold as the immediate aims for American education, equal opportunity for all and progressive achievement for each according to his needs and capacities."

2. It is the responsibility of each school staff, augmented by representatives from the community, to develop the organizational pattern which best meets the needs of the community it serves, subject to review and recommendations by the Curriculum Department, Department of Pupil Personnel, and subject to approval and implementation by the Assistant Superintendents concerned.

3. The overall philosophy of the school system is that it will provide the maximum opportunity for learning for each child and that the only purpose for grouping is to facilitate the learning experience. The nature of the learning experience is the prime factor in determining the kind of grouping which is to be used.

4. Individual differences exist among pupils and the instructional program must adapt itself to these differences.

5. Each child has individual and unique aptitudes in each subject area. Therefore, he will be a member of many groupings in terms of his performance in the subject matter area concerned. Grouping procedures must be flexible enough to provide for each child's varying performance levels.

6. There will be continuous evaluation of pupil growth by school staff and pupil personnel services both for diagnostic purposes and for the assessment of progress.

Based on these principles, the school system will move to a program of individual instruction to replace the track system.

We believe that individualization of instruction can be best achieved:

1. By offering each school alternative choices in the selection of the type of organization it will use. Guidelines for these will be supplied by the administration. These alternatives may include the non-graded organization, dual progress plan, inter-age and multi-grade grouping, or others.

2. By adopting a general plan which (1) allows heterogeneously grouped pupils in the first three grades to progress continuously on an individual basis without the stigma of failure, (2) organizes overlapping rather than stratified grade groupings in the intermediate grades, and (3) requires individual programming on the secondary school level.

3. By developing in each school an educational resource center to which children will be sent on an individual interest basis and which will be staffed with teacher specialists.

The development of a program of individual instruction is very difficult. However, the Model School Division has moved toward this goal by developing team teaching and non-graded primary programs. It has also experimented with a variety of new materials which provide concrete rather than abstract learning experiences. This experience is available to the rest of the school system. In addition to this, the Curriculum Department is developing our central Educational Resources Center which will promote the development of a similar center in each school.

Inherent in the move to a program of individual instruction is the need for (1) a massive training or retraining program for principals, teachers, and supervisors so that they can become effective in dealing with multiple groupings within the classroom and the use of new materials; (2) a wide assortment of materials; and (3) the continuing development of curriculum materials to implement the diverse plans adopted by the various schools and to meet the needs of the community. These needs imply increased budget costs as well as the more efficient utilization and coordination of our present resources, our current staff, facilities equipment and supplies.

Recommendations:

1. That the school system develop a program of individual instruction based on the principles and steps outlined in the preceding paragraphs.

2. That schools open for children on Friday, September 8, 1967, instead of Wednesday, September 6, 1967, in order that school staffs may in an educationally sound manner prepare a new organization.

*II. LONG RANGE PUPIL ASSIGNMENT PLAN

III. PLANS FOR TRANSPORTING VOLUNTEERING CHILDREN TO UNDERPOPULATED SCHOOLS WEST OF ROCK CREEK PARK:

There are a number of considerations involved:

1. availability of pupil space

2. availability of contract transportation

3. age level of transported students and required supervision

4. time and distance

5. suitability of space to age level of students

6. parental consent to transportation

A contract for bus transportation has been under negotiation for some time. There is a serious problem of availability of busses: D. C. Transit was the sole bidder on the contract, and has advised that they can furnish a maximum of 20 busses during the hours currently required. Additional busses would be available only non-peak load hours (after 9:00 a.m., before 4:00 p.m.).

With respect to transportation throughout the city, the Administration proposes to establish the following priorities:

1. integration of schools west of the Park.

2. elimination of all double shifts and half-day classes.

3. reduction where possible of large classes, overcrowding of school facilities, and use of substandard rooms.

* Omitted from this report.

Those students who are transported west of the Park will be integrated into the total population of the receiving school, and not retained in original class groupings from the sending schools.

The costs of transportation have not yet been estimated. Under the decree, transportation costs must be provided to students transferred west of the Park. In this case, it is proposed to furnish free school-controlled transportation for elementary school children, and, because of the unavailability of contract busses, to provide tickets or tokens for use on public transportation at the secondary level.

Summary of Transportation Plan

1. An estimate has already been made of the degree (in terms of pupil spaces available) of overcrowding and undercrowding in each school at all levels based on projected September enrollments. Priorities have been established.

2. Elementary schools west of the Park will be filled by transporting students from overcrowded schools east of the Park, integrating them into the populations of the schools, and providing the additional staff required. Priorities among overcrowded schools have been given to poverty area schools with double shifts and serious overcrowding.

3. Spaces in secondary schools west of the Park (to 110% of capacity) will be filled by voluntary transfer. Cost will be borne by the schools and the availability of such transfers will be readvertised and granted on a first request basis. All requests for transfers west of the Park which have been received to date will not be honored at this time but will be readvertised in order to allow an opportunity for parents who could not afford transportation to request transfer.

Recommendations:

1. That students who are transported west of Rock Creek Park be integrated into the total population of the receiving school.

2. That tickets or tokens be used for the transportation of secondary school pupils.

3. That busses be used for the transportation of elementary school children.

4. That priorities for transportation be given to the most seriously overcrowded schools in the lower socio-economic areas.

5. That bus attendants be provided at a ratio of 1 to 30.

6. That all new requests for transfers to schools west of the Park received to date be cancelled and that an announcement of available opportunities in terms of our priorities be issued.

*IV. PRELIMINARY PLANNING IN REGARD TO FUTURE DESIGN AND LOCATION OF NEW SCHOOLS

*V. PRELIMINARY PLANS FOR SUBSTANTIVE, COMPREHENSIVE COMPENSATORY EDUCATION

VI. PLANS FOR ESTABLISHMENT OF NEW ZONES TO REPLACE ABANDONED OPTIONAL ZONES

All optional zones throughout the city have been eliminated, and disposition has been made in the following manner:

1. All optional zones at the junior and senior high school levels have been abolished.

2. All students now attending schools out-of-zone on special permission may remain in their present schools until graduation.

3. All students entering the seventh or tenth grades or who are new to the area must attend the schools to which the former optional zones are attached.

4. The former optional zone for Wilson, Western, and Roosevelt bounded by Rock Creek, Piney Branch Parkway and 16th Street, and Kennedy Street extended, has been assigned to Wilson.

   Junior High School students in this area will attend Deal. It was formerly optional between Gordon and Macfarland.

5. The former optional zone between Western and Cardozo bounded by Piney Branch Parkway, the Zoo, Adams Mill Road, Columbia Road and 16th Street has been assigned to Western.

6. The former optional zone between Gordon and Banneker bounded by Piney Branch Parkway, Porter Street, Park Road and 16th Street becomes part of the Lincoln zone.

7. The former optional zone between Western and Dunbar bounded by South Capitol Street and Independence Avenue. each extended to the river, has been assigned to Western.

* Omitted from this report.

8. In the elementary schools, the optional zone between Powell and Hearst reverts to Powell. All children from that zone are allowed to remain until graduation. All new children must attend Powell.

The elimination of optional zones and their absorption into existing school zones does not solve the major problems of our school attendance zones at any grade level. There is a pattern of school zones established originally in the post-1954 integration of the schools. While the Board and Administration attempted at that time to establish the best possible pattern, the practice since then has been one of individual year-to-year changes and adaptations dictated by increases in population, opening of new buildings, etc.

The city population patterns are by nature fluid and represent the organic life of the city. Two problems confront a school system attempting to adapt to these patterns: (1) census data are exceptionally difficult to keep up-to-date; and (2) building locations are permanent restrictions, especially when new construction is so paced that older buildings must remain in use well beyond their normal life-span to accomodate a large student population.

It is reasonable, however, for the staff to make the following recommendations:

1. That the administration begin immediately to prepare, with the assistance of the staff of each school, a detailed analysis of the city showing:

    a. population density
    b. socio-economic levels and patterns
    c. transportation patterns
    d. natural impediments (commercial districts, freeways, etc.)

2. That as a result of this analysis a new boundary system be devised which will, whenever and wherever possible, cut across and sample the patterns (a) and (b) above.

3. That this boundary system be introduced in September, 1968. Boundaries reflecting major changes should be phased; i.e., incoming classes should conform to the new boundaries, and interruptions to previous school attendance in upper grades held to a minimum.

With respect to the boundaries and enrollment at Jefferson, the following will apply:

For the school year 1967-68 all Tri-School graduates will be eligible to attend Jefferson Junior High School regardless of their zone of residence.

All present eighth and ninth grade students now attending Jefferson will be allowed to remain in Jefferson until they graduate.

If there is room after the Tri-School students and the present eighth and ninth grades have been accommodated, applications for transfer to Jefferson will be accepted from overpopulated schools (110% of capacity) until Jefferson reaches an enrollment of 630, twenty-six above its capacity of 604.

Our projections indicate that to continue to take all Tri-School graduates would increase the school enrollment in 1969 to 747 (115% of capacity) resulting in a serious impairment of the educational programs at Jefferson.

We are, therefore, proposing that for all pupils new to the area in 1967 and for all pupils in 1968 the boundary of Jefferson be shifted to 1st Street, S. W.

For further details, please refer to Board Report of May 17, 1967.

VII. PLAN FOR SUBSTANTIAL TEACHER INTEGRATION FOR FALL, PARTICULARLY WITH NEWLY APPOINTED TEACHERS, AND PRELIMINARY LONG RANGE PLANS

We will move immediately to implement the requirement for substantial teacher integration beginning with the opening of schools in September, 1967.

The personnel records of the Public School System contain no questions or notations by which the race of an employee may be ascertained. However, the annual October census report does give information relative to the race of pupils and staff.

The October, 1966, census report contains the following with reference to the race of teachers, counselors, librarians, school psychologists and speech correctionists:

	White	Negro	Total
Elementary Schools	568	2792	3360
Junior High Schools	277	1221	1498
Senior High Schools	344	528	872
Vocational High Schools	60	130	190
Serving all Levels	74	187	261
D. C. Teachers College	20	38	58
All Others	35	71	106
	1378	4967	6345
	21.7%	78.3%	100%

An examination of these figures reveals that if the number of white elementary school teachers were divided equally among all elementary schools, there would be between three and four white teachers in each building. Similarly, in the junior high schools, there would be between 10 and 11; and in the senior high schools, there would be between 31 and 32.

The October, 1966 report shows that many schools either have no faculty integration at all or that integration is considerably below the maximum that could be achieved if teachers were divided equally on a racial basis. Such schools will be primary targets for implementation of the integration order.

It should be noted that usually as we consider the problem of teacher assignment, other factors are considered. Such factors are presently being negotiated between the Board of Education and the Teachers' Union. They include the distance the teacher will have to travel, the health of the teacher, and/or the tenure of the teacher. It should be noted that our Department of Personnel has indicated that since October, 1966 we have had a turnover of approximately 750 teachers. Thus, the October survey is outdated. A second survey as of June, 1967 is now under way.

Based on the partial results of the June survey, we plan to assign new teachers on a color-conscious basis to our primary target schools. We also plan to determine whether or not there are teachers who will voluntarily offer to transfer to schools where faculties are predominantly of a different race.

Additional integration of faculties will be achieved by the color-conscious assignment of teachers needed for the children transferred from east of Rock Creek Park to underpopulated schools west of Rock Creek Park.

The administration does not contemplate the involuntary transfer of experienced teachers at this time. It proposes (1) to study the effects of the immediate assignment plan, (2) examine the possibility of expanding the Urban Teaching Corps Program. (3) reexamine our teacher recruitment program, (4) study the possibility of establishing college and university intern programs similar to the Antioch and Trinity programs, and (5) consider the provision of stipends for teachers assigned to difficult areas.

Recommendations:

1. That as of this date all teachers new to the system be assigned to schools on a color-conscious basis so as to promote faculty integration.

2. That, if this policy has not been observed in teacher assignments made since the close of school in June, an effort be made to change those assignments so as to bring them in line with this policy.

3. That experienced teachers be surveyed to determine whether or not they will voluntarily transfer to a school where the faculty is predominantly of the opposite race.

4. That the assignment of teachers needed for children transferred from over-crowded schools east of Rock Creek Park to underpopulated schools west of Rock Creek Park be made on a color-conscious basis so as to promote faculty integration.

5. That the administration develop long range plans to promote complete integration based on a study of (1) the effects of the four steps outlined above, (2) expansion of the Urban Teaching Corps, (3) examination of our current recruitment program, (4) possible establishment of additional college and university intern programs, (5) stipends for teachers in difficult areas, and (6) involuntary transfer of teachers.

At this same July 28 meeting the Board of Education approved a motion "that the administration report to the Board on August 18, three weeks from tonight, its further development of plans and procedures in the implementation of the decree including specific arrangements for consultant services and for the two days during which school opening will be delayed."

7. On August 18, 1967, the administration submitted to the Board of Education a progress report outlining the steps taken to implement the proposals adopted by the Board on July 28, 1967.

Current Assessment of Results of Actions Taken by Defendants

I. With Reference to the Track System

The track system is abolished. Classes are heterogeneous for all children except those who are enrolled in special education programs.

- Special academic classes have been discontinued
- Junior primary classes have been discontinued
- Special education classes contain only those children who have specific physical or mental handicaps, or who show substantial emotional or social maladjustment
- The first three grades of the elementary schools have been organized on the basis of either a non-graded sequential pattern of instruction or self-contained classes with greater heterogeneity
- The middle grades of the elementary schools are using either the Joplin Plan, a modification of the Joplin Plan, departmentalization or self-contained classes with greater heterogeneity as they study and evolve the permanent organization which they will use
- Secondary schools are programming students on an individual basis. Elective subjects are open to all students who have the prerequisites for the course.

NOTE: The Joplin Plan refers to organizing heterogeneous classes which break into smaller groups for the study of specialized subjects.

Non-graded sequential pattern of instruction refers to the replacement of grade levels as 4, 5 or 6 with a specific series of curriculum units through which children heterogeneously grouped progress as they are able.

II. With reference to optional zones

All optional zones have been abolished.

The optional zones specified in the decree of the Court have been assigned as follows:

The former optional zone between Wilson - Western - Roosevelt has been assigned to Wilson.

The former optional zone between Western and Cardozo has been assigned to Western.

The former optional zone between Gordon and Banneker has been assigned to Lincoln.

The former optional zone between Western and Dunbar has been assigned to Western.

The former optional zone between Powell and Hearst has been assigned to Powell.

The former optional zone between Gordon and Macfarland has been assigned to Deal.

While not specifically ordered by the Court to do so, the defendants, also, abolished all other optional zones.

Thus, the former optional zone between Shephard and Takoma has been assigned to Takoma.

The former optional zone between Eaton and Hearst has been assigned to Hearst.

The former optional zone between Miner and Blow has been assigned to Blow.

The former optional zone between Janney and Hearst has been assigned to Hearst.

III. With reference to the provision of transportation for volunteering students from overcrowded schools east of Rock Creek Park to undercapacity schools west of Rock Creek Park

Bus transportation is being provided for volunteering children from overpopulated schools east of Rock Creek Park to undercapacity schools west of Rock Creek Park.

On September 28, 1967, 446 elementary children were bussed west of Rock Creek Park.

Elementary students bussed west of Rock Creek Park came from three overcrowded Anacostia area schools: Moten, Draper, and Turner. They were being sent to nine schools.

From	To	Number of Children	Number of Busses
Moten 197	Jackson	67	2
	Fillmore	76	1
	Mann	54	1
Draper 180	Hardy	90	2
	Janney	50	1
	Key	40	1
Turner 69	Murch	32	1
	Hearst	14	
	Eaton	23	1
Totals		446	10

The total number of elementary school students being bussed is less than the number estimated by the administration on July 28, 1967.

This is partly due to the fact that the school system has been unable to relocate three rooms of the Reading Clinic and two rooms now being used by the Department of Health, Physical Education, Athletics, and Safety.

As of September 20, 1967, secondary school students had been transferred from overcrowded schools east of Rock Creek Park to under-populated schools west of Rock Creek Park as follows:

To Gordon Junior High School				237
From Douglass	19	Kramer	27	
Hine	10	Sousa	33	
Langley	10	Taft	40	
Stuart	9			
Terrell	8			
Browne	9			
Hart	72			

Of these pupils, 196 were furnished bus tickets.

To Deal Junior High School				23
From Taft	7	Sousa	1	
Kramer	4	Douglass	5	
Stuart	1			
Hart	4			
Langley	1			
To Western High School				52
From Anacostia	12			
Ballou	8			
Dunbar	24			
McKinley	7			
To Wilson High School				158 *
From Anacostia	48			
Ballou	43			
Dunbar	20			
McKinley	47			

Of these pupils, 117 were furnished bus tickets.

Free bus tickets have been offered to all these students but not all have accepted. Additionally, transportation for some students is furnished by Bolling Air Force Base.

It is worthy of note that the number of secondary students who actually transferred to schools west of Rock Creek Park, in accordance with criteria set up under terms of the Decree, was less than the number granted permission to transfer.

* The figures for Wilson are as of September 29, 1967.

IV. WITH REFERENCE TO TEACHER INTEGRATION

Integration of faculty has been effected in a number of schools.

Newly appointed teachers are being assigned on a color-conscious basis.

Teachers who have expressed a willingness to teach in a school where the faculty is predominantly of a race other than their own are being transferred when such transfers are educationally feasible.

Teachers needed for increased enrollments west of Rock Creek Park are being placed on a color-conscious basis.

The assignment of special department staff, such as art, music, science and physical education personnel, are being assigned on a color-conscious basis.

The following tables show the changes resulting from concerted efforts to assure teacher integration.

TABLE I

Elementary Schools

Percent of Negroes on Faculty	October 20, 1966	June 14, 1967	October 2, 1967
100.0	47	47	12
85.0-99.9	44	38	75
67.0-84.9	17	19	18
33.0-66.9	10	14	18
15.0-32.9	3	4	8
0.1-14.9	8	6	2
0.0	5	6	1 *
TOTAL	134	134	134

The elementary school table shows that between October 20, 1966 and October 2, 1967 the number of schools with all Negro faculties was reduced from 47 to 12. The number of schools with all white faculties was reduced from 5 to 1. *

* One Negro counselor serves Fillmore, Jackson and Hyde Elementary Schools (a single administrative unit) and she is included for reporting purposes as a member of the staff at Jackson Elementary School. Hyde Elementary School is the only elementary school without at least one full-time Negro faculty member.

TABLE II

Junior High Schools

Percent of Negroes on faculty	October 20, 1966	June 14, 1967	October 2, 1967
100.0	0	1	0
85.0-99.9	15	14	15
67.0-84.9	8	8	8
33.0-66.9	3	3	4
15.0-32.9	0	0	1
0.1-14.9	1	1	0
0.0	0	0	0
Total	27	27	28

TABLE III

Senior High Schools

Percent of Negroes on faculty	October 20, 1966	June 14, 1967	October 2, 1967
100.0	0	0	0
85.0-99.9	2	2	1
67.0-84.9	4	3	5
32.0-66.9	3	4	4
15.0-32.9	1	1	1
0.1-14.9	1	1	0
0.0	0	0	0
Total	11	11	11

TABLE IV

Vocational High Schools

Percent of Negroes on faculty	October 20, 1966	June 14, 1967	October 2, 1967
100.0	0	0	0
85.0-99.9	2	2	2
67.0-84.9	0	0	0
33.0-66.9	3	3	3
15.0-32.9	0	0	0
0.1-14.9	0	0	0
0.0	0	0	0
Total	5	5	5

The tables show that as of October 2, 1967 no secondary school had either all Negro or all white staffs. In June, 1967, one school, Woodson Junior High School, had an all Negro staff.

Changes in staff are occurring daily. Assignments are still being made on a color-conscious basis. Thus, the trend toward increasing staff integration shown in the tables above will continue.

Table V, below, shows the changes in thirteen (13) elementary schools west of Rock Creek Park between October 20, 1966, and September 27, 1967. It clearly illustrates the trend toward increasing staff integration.

TABLE V

Staff Integration in Elementary Schools West of Rock Creek Park

	October 20, 1966				June 14, 1967				September 27, 1967			
	W	C	Total	%	W	C	Total	%	W	C	Total	%
Eaton	14	1	15	6	14	1	15	6	13	4	17	24
Fillmore	4	0	4	0	5	0	5	0	5	3	8	38
Jackson	3	2	5	40	3	2	5	40	3	2	5	40
Janney	19	0	19	0	19	1	20	5	18	3	21	14
Hardy	8	1	9	11	7	0	7	0	7	3	10	30
Hearst	9	1	10	10	9	2	11	18	7	3	10	30
Hyde*	6	0	6	0	4	0	4	0	4	0	4	0
Key	6	3	9	33	6	3	9	33	8	3	11	27
Lafayette	22	2	24	8	23	2	25	8	25	4	29	14
Mann	10	0	10	0	10	0	10	0	9	3	12	25
Murch	21	2	23	9	22	2	24	8	21	5	26	19
Oyster	10	1	11	9	10	0	10	0	8	3	11	27
Stoddert	8	1	9	11	8	1	9	11	7	2	9	22
TOTALS	140	14	154	9%	140	14	154	9%	135	38	173	22%

Additionally the ten Negro teacher aides who supervise the elementary school pupils while they are being bused to and from the west of Rock Creek Park remain in the receiving schools to perform routine aide duties throughout the school day. Their presence is not reflected in Table V.

*See the footnote on Page 20.

TABLE VI

Staff Integration of All Elementary Schools East of Rock Creek Park with Predominantly White Faculties on October 20, 1966.

School	October 20, 1966				September 29, 1967			
	W	C	Total	%	W	C	Total	%
Orr	10	1	11	9	6	5	11	45
Patterson	31	1	32	3	34	17	51	33

Table VI shows that between October 20, 1966 and September 29, 1967, the number of Negroes on the staff of Orr Elementary School has been increased from 1 to 5. Table VI also shows that between October 20, 1966 and September 29, 1967 the number of Negroes on the staff of Patterson Elementary School has been increased from 1 to 17.

TABLE VII

Changes in Staff Integration in Predominantly White Secondary Schools West of Rock Creek Park Since October 1966

	October 20, 1966				September 27, 1967			
	W	C	Total	%	W	C	Total	%
Deal	53	6	59	10	48	10	58	17
Wilson	68	4	72	6	67	13	80	16

Table VII shows that between October 20, 1966 and September 27, 1967, the number of Negroes on the faculty of Alice Deal Junior High School increased from 6 to 10. Table VII also shows that between October 20, 1966 and September 27, 1967, the number of Negroes on the faculty of Wilson Senior High School increased from 4 to 13.

UNITED STATES COURT OF APPEALS
WASHINGTON, D. C. 20001

J. SKELLY WRIGHT
UNITED STATES CIRCUIT JUDGE

November 25, 1966

William M. Kunstler, Esquire
Kunstler, Kunstler & Kinoy
511 Fifth Avenue
New York, New York 10017

Re: Hobson v. Hansen
Civil Action No. 82-66

Dear Mr. Kunstler:

I have your letter of November 23 respecting the court's ruling on plaintiffs' Exhibits W7, W8 and W27.

In the court's order filed November 8, 1966, these exhibits were ordered excluded.

Sincerely,

J. Skelly Wright

cc: James M. Cashman, Esquire

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 134 September Term, 1965
Civil Action No. 82-66

Julius W. Hobson, individually and on behalf of Jean Marie Hobson and Julius W. Hobson, Jr., et al.,
Plaintiffs,

v.

Carl F. Hansen, Superintendent of Schools of the District of Columbia, et al.,
Defendents.

ORDER

BAZELON, Chief Judge: This motion raises an important question concerning the administration of statutory three-judge District Courts convened under 28 U.S.C. §§2282 and 2284 (1964). The complaint in this action consists of six counts. Count one asserts unconstitutionality as grounds for enjoining the enforcement of D.C. Code §31-101(a) (1961), which requires the judges of the United States District Court for the District of Columbia to appoint a board of education for the District. Counts two through six allege various racial and economic discriminations by school authorities against school children and teachers and ask for their abatement by injunction.

Circuit Judge Wright, sitting by assignment in the District Court, requested me, as Chief Judge of the Circuit, to convene a three-judge District Court pursuant to 28 U.S.C. §2284 to hear the constitutional challenge to D.C. Code §31-101(a).[1/] After examining the complaint and other records in the case, I exercised my authority under §2284 to determine whether substantial constitutional issues were raised.[2/]

1. Hobson v. Hansen, 252 F.Supp. 4 (D.D.C. 1966).

2. Cf., California Water Serv. Co. v. City of Redding, 304 U.S. 252 (1938); Miller v. Smith, 236 F.Supp. 927 (E.D.Pa. 1965), motion for leave to file petition for writ of mandamus denied sub. nom., Miller v. Biggs, 382 U.S. 805 (1965); Red Lion Broadcasting Co. v. FCC, Three-Judge File No. 129, D.C.Cir., Dec. 2, 1965, motion for leave to file petition for writ of mandamus denied sub. nom., Red Lion Broadcasting Co. v. Bazelon, ___ U.S. ___ (Misc. No. 1346, May 31, 1966).

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 134 September Term, 1965
Civil Action No. 82-66

I then convened a three-judge court on March 29, 1966, to which I referred only count one of the complaint. My stated purpose was to leave counts two through six before Judge Wright in his capacity as a single-judge District Court.

In the present motion, the defendants request me to expand my order convening the three-judge court to include the issues raised and relief requested in counts two through six. They contend, citing authorities,[3] that "a three-judge court, once impanelled under 28 U.S.C. §2284, has complete jurisdiction over the entire case and neither a single-judge court nor the chief judge of the circuit has the power to divest the three-judge court of its jurisdiction."[4] In the context of this case, I disagree.

The cases upon which defendants rely are based on concepts of pendent jurisdiction. They hold that where a statute is sought to be enjoined on federal constitutional grounds, as well as on either state law or federal statutory grounds, the three-judge court has authority to hear all the legal theories advanced against the validity of the statute. The rationale of these cases is two-fold: first, that non-constitutional grounds should be available to the three-judge court so that it may, if possible, avoid constitutional decision; and second, that since the different legal theories all rest upon a single complex of facts,

3. Florida Lime & Avocado Growers, Inc. v. Jacobsen, 362 U.S. 73 (1960); Chicago G.W. Ry. v. Kendall, 266 U.S. 94 (1924); Louisville & N. R.R. v. Garrett, 231 U.S. 298 (1913); Firemen's Ins. Co. v. Beha, 30 F.2d 539 (S.D.N.Y. 1928), aff'd sub. nom., Firemen's Ins. Co. v. Conway, 278 U.S. 580 (1929).

4. Since Judge Wright requested a three-judge court only for count one (Hobson v. Hansen, supra note 1), the question arises whether the Chief Judge's authority, ministerial or discretionary, may be extended to counts two through six.

judicial efficiency will be best served if all the challenges to the statute are heard at one time by one tribunal.[5/]

The present case is in sharp contrast. Here count one is in no way related to counts two through six, except for the identity of certain defendants. The statute under attack in count one is not challenged or even adverted to in the remainder of the complaint. A decision on the constitutionality of the statute cannot, therefore, be avoided by a decision on the claims in counts two through six, nor can a consideration of the issues raised in those counts contribute in any way to resolution of the constitutional question presented in count one. In addition, there is no identity between the factual issues underlying count one and those of the rest of the complaint. Count one and counts two through six thus present wholly separate and independent claims, albeit against the same defendants.[6/] As such, the rationale of pendent jurisdiction and the cases relying on that doctrine are inapposite here.[7/]

5. See, e.g., cases cited in note 3 supra; Sterling v. Constantin, 287 U.S. 378, 393-94 (1932); Kurland, The Romero Case and Some Problems of Federal Jurisdiction, 73 Harv. L. Rev. 817, 833-45 (1960).

6. This joinder of claims, of course, has been sanctioned since 1938 by Rule 18(a), Fed. R. Civ. P. Since most of the cases upon which defendants rely were decided prior to 1938, the situation presented here was not, and could not have been, contemplated by the Supreme Court. For this reason, the broad language of these opinions, which might be read to support defendants' arguments, must be qualified by reference to the facts of those cases--an attack upon a single statute based upon one underlying factual matrix.

7. Count one of the complaint has been fully briefed and argued to the three-judge court and has been submitted to it for well over a month. The defendants' tardiness in moving to certify counts two through six to the three-judge panel shows that they were not hampered in any way during the hearing on count one by the absence of joinder and further

(continued on page 4)

Pl's' Supplemental Brief on the Question of Standing

I. Plaintiffs have standing as a result of direct personal interest and concrete adverseness.

The Supreme Court gave new and liberal meaning to the question of standing in Baker v. Carr.[1] In that landmark decision, Mr. Justice Brennan, speaking for the Court in part III of the opinion, stated that the issue was:

> Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the Court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing. It is, of course, aof course, a question of federal law.

P

Plaintiffs sue "in their own behalf and in behalf of all other Negro children attending the public schools in the District of Columbia, their parents and guardians, and teachers employed by the defendants similarly situated and affected with reference to the matters here involved."[2]

As representatives of these classes, plaintiffs represent, (1) over 90% of the pupils in the District of Columbia public schools, (2) over 90% of the parents of the pupils of the District of Columbia public schools, (3) at least the approximately 70% of the teachers in the District of Columbia public schools who are Negro. It would be difficult to imagine any other persons, officials or groups having a more personal stake in the outcome of this controversy as to the constitutionality of the method of selection of the School Board than these classes of plaintiffs represented in this action. Plaintiffs request relief of direct elections of their School Board. Both their right to vote in itself,[3] and the chance to remedy through the democratic process[4] the tragic evils described in causes of action 2-6 of the Complaint, are issues that assure a "concrete adverseness" and involve voting, the most basiesright of a democracy, and education, referred to by Chief Justice Warren as "perhaps the most important function of state and local governments."[5]

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1. 369 U.S. 186 (1962)

2. P. 2 of the Complaint

3. See Part III, Infra.

4. See Part III, Infra.

5. Brown v. Board of Education, 347 U.S. 483, 493 (1954).

of course, not courses, a question of federal law.

Negro children attending the public schools in the District of Columbia, their parents and guardians, and teachers employed by the defendants similarly situated and affected with reference to the matters here involved."[2]

As representatives of these classes, plaintiffs represent, (1) over [illegible] of the pupils in the District of Columbia public schools, (2) over [illegible] of the parents of the pupils of the District of Columbia public schools, (3) at least the approximately 70% of the teachers in the District of Columbia public schools who are Negro. It would be difficult to imagine any more persons. [illegible] of selection of the School Board than these classes of plaintiffs represented in this action. Plaintiffs request relief of direct elections of their School Board. Both their right to vote in itself,[3] and the means to remedy through the democratic process[4] the tragic evils described in causes of action 2-6 of the Complaint, are issues that assure a "concrete adverseness" and lasting vesting, [illegible] of a democracy, and education, referred to by Chief Justice Warren as "perhaps the most important function of state and local governments."[5]

The decent education of Plaintiff parents' children surely gives rise to the presence of a "personal stake" assuring "concrete adverseness", supplying "illumination of difficult constitutional questions."[6]

II. Plaintiffs' ability to secure relief through the political process for the tragic evils which are set forth in causes of action 2-6 is directly affected by the determination of the first cause of action.

Plaintiffs are being injured, as they have stated in causes of action 2-6 of the Complaint. Though no evidence has yet been introduced, the recent report on anti-poverty by the District of Columbia by the Task Force of the House Education and Labor Committee[7] would at the very least attest to the substantiality of the allegations in causes of action 2-6. The present method of selecting the School Board precludes any voicing of their true needs by the people. Therefore, it is quite clear that the method of selecting of the agent responsible for injuring plaintiffs -- the Defendant School Board, Defendant Members and the Defendant Superintendent -- is an issue which directly affects the substantial rights of Plaintiffs, rights asserted in causes of action 2-6 of the Complaint.

III. This case also falls within the central principle of Baker v. Carr. that an unconstitutional denial or dilution of one's right to vote confers standing to protect that right.

At present the nine-member Defendant School Board of the District of Columbia is appointed by the Defendant Federal Judges of the District of Columbia for staggered three-year terms -- three each year --[8] in such a manner that the Defendant Judges exercise -- by action or inaction --

---

6. See note C (2) Hart and Wechsler, The Federal Courts and the Federal System (1953), p.174-175.
7. 89th Congress, Second Session, (June, 1966)
8. 31 D.C. Code 101

At present the nine-member Defendant School Board of the District of Columbia is appointed by the Defendant Federal Judges of the District of Columbia for staggered three-year terms -- three each year --[3] in such a manner that the Defendant Judges exercise -- by action or inaction --

effective control over the public schools of the District of Columbia. Defendant Judges are appointed for life by the President of the United States. Therefore the control of the public schools of the District of Columbia is in the hands of lifetime appointees -- an administrative situation not wholly unlike the property situation giving rise to the Rule Against Perpetuities. In essence, some of the lifetime tenure characteristics of the Federal Judiciary, which isolates it from the electorate, cloak the School Board under this arrangement. Plaintiffs, as governmental[9] beneficiaries of the Constitution's separation of powers, suffer by its violation.

On the other hand the only officials (of consequence) for which the plaintiffs and other citizens of the District of Columbia may vote are Presidential Electors.[10] Therefore, if this Court should grant relief on the first cause of action in terms of placing the selection of the School Board under the Presidential appointment power, then the Plaintiffs would have a far more direct voice in the selection of the School Board through their votes at the ballot box every four years. Even if the selection of the School Board were placed under the appointment power of the Commissioners of the District of Columbia, the Plaintiffs would possess a fuller and more direct vote for their School Board.[11] Moreover, if, as Plaintiffs believe to correct, the appropriate remedy is direct election of the School Board, then Plaintiffs' right to vote is not only being diluted but completely denied by the unconstitutionality of Sec. 31-101 of the D.C. Code.[12] In any, case, Plaintiffs are suffering either an abridgment, dilution, or denial of their right to vote, which clearly entitles them to standing under Baker v. Carr and subsequent cases.[13]

9. Point V deals with plaintiffs' standing as beneficiaries of separation of powers protections.
10. Twenty-third Amendment to the Constitution (April 3, 1961)
11. Commissioners are appointed every three years, exceptithat the engineer Commissioner serves at the pleasure of the President. (D.C. Code 1-201, 202 and 209.
12. Gomillion v. Lightfoot, 364 U.S. 339.(1961).
13. See Reynolds v. Sims, 377 U.S. 533, 554-555 (1964); and Gray v. Sanders, 372 U.S. 368 (1963).

IV. This case falls within another basic principle of Baker v. Carr, that the absence of, or inability of the political process, over a long period of time, to grant relief for the denial of basic constitutional rights, imposes a strong responsibility upon the judiciary to redress the denial of those rights.

Mr. Justice Brennan and his Brothers in the majority pointed out the "stranglehold" that had developed in Tennessee in particular and other state legislatures in general -- a condition in which the political method of expression of the people was totally insufficient to remedy denials of federal constitutional rights. Mr. Justice Douglas stated, in his concurring opinion:

> Chief Justice Holt stated in Ashby v. White, 2 Ld. Raym. 938, 956, (a suit in which damages were awarded against election officials for not accepting the plaintiff's vote, 3 Ld. Raym. 320) that:
>
> > To allow this action will make public officers more careful to observe the constitution of cities and boroughs, and not so partial as they commonly are in all elections, which is indeed a great and growing mischief, and tends to prejudice the peace of the nation.
>
> The same prophylactic effect will be produced here, as entrenched political regimes make other relief as illusory in this case as a petition to Parliament in Ashby v. White would have been...
>
> As stated by Judge McLaughlin in Dyer v. Kazuhisa Abe, 138 F. Supp. 220, 236 (an apportionment case in Hawaii which was reversed and dismissed as moot, 256 F. 2d 728):
>
> > The whole thrust of today's legal climate is to end unconstitutional discrimination. It is ludicrous to preclude judicial relief when a mainspring of representative government is impaired. Legislators have no immunity from the Constitution. The Legislatures of our land should be made as responsive to the Constitution of the United States as are the citizens who elect the legislators.
>
> With the exceptions of Colegrove v. Green, 328 U.S. 549; MacDougall v. Green, 335 U.S. 281; South v. Peters, 339 U.S. 276; and the decisions they spawned, the Court has never thought that protection of voting rights was beyond judicial cognizance. Today's treatment of those cases removes the only impediment to judicial cognizance of the claims stated in the present complaint.
>
> The justiciability of the present claims being established, any relief accorded can be fashioned in the light of the well known principles of equity*5

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*5..."If by any reason of passage of time and changing conditions the reapportionment statute no longer serves its original purpose of securing to the voter the full constitutional value of his franchise, and the legislative branch fails to take appropriate restorative action, the doors of the courts must be opened to him. The law-making body cannot by inaction alter the constitutional system under which it has been known existence." (Asbury Park Press v. Woolley) 33 N.J., at 14, 167 A. 2d, at --....

The whole clause of Casey's local climate is to
and unconstitutional discrimination. It is injurious
to practice [illegible] political [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

In essence, then, the absence of a political remedy, or of an effective political remedy[14], is a critical factor in establishing standing to sue, whether or not it would otherwise exist.[15] The facts in the case at bar are even stronger than those in Baker. There was at least a direct right to vote for those representatives governing the affairs of the Plaintiffs in Baker; here there is only an indirect right to vote every four years for a President -- an executive who might or might not have the opportunity to appoint one or more of the judges of the U.S. District Court of the District of Columbia, who in turn, appoint at short intervals the Defendant School Board which administers the District of Columbia public school system.[16] Thus, in the District of Columbia, there is an almost total absence of the political remedy for the redress of grievances; the ballot box is virtually nonexistent. If Plaintiffs' constitutional rights are to be secured and protected, it is of necessity that they must rely upon the judiciary.

V. The respective appointment powers of the three branches in Article 2, Clause 2, Section 2, reflect the separation of powers, designed in particular to preserve the independence and integrity of the judiciary. This independence protects Plaintiffs' rights as litigants to a fair and impartial tribunal, both in this case and in any future litigation involving their rights in regard to the Defendant School Board.

14. YMCA v. Lorenzo, 377 U.S. 633, 651-653 (1964); Reynolds v. Sims. 377 US. 533, 553-561 (1964)

15. The fact that Congress could exercise its grace after nearly a century and give relief is, unlike Baker, merely a possibility, so that Plaintiffs have no political remedy at all. (In Baker, dilution rendered political recourse ineffective.)

16. Of course, the statutes governing the public schools are enacted by a Congress in which Plaintiffs and other citizens of the District of Columbia have no voice in the selection.

[illegible]

[illegible] four years for a President — [illegible] the opportunity to appoint one or more of the judges of the U.S. District Court of the District of Columbia, who in turn, appoint at short intervals the Defendant School Board which administers the District of Columbia public school system.[16] Thus, in the District of Columbia, there is an almost total absence of the political remedy for the redress of grievances; the ballot box is virtually nonexistent. If Plaintiffs' constitutional rights are to be secured and protected, it is of necessity that they must rely upon the judiciary.

3. The [illegible]

14. [illegible]

15. [illegible]

16. [illegible]

17. [illegible]

Plaintiffs have a direct interest in the first cause of action as parents, pupils, teachers, citizens and taxpayers. Moreover, they have a direct interest as present and future parties to litigation involving denial of their constitutional rights as presently set forth as causes of action 2-6 of the Complaint.

The parts of the Constitution which embody the protection of an independent and unbiased judiciary have a direct, personal and immediate effect upon litigants and potential litigants.[17] As has been shown[18], respective appointment powers of the three branches under Article 2, Clause 2, Section 2 do protect an independent, unbiased judiciary. In other words, if the first cause of action is upheld, the Plaintiffs will thenceforth be entitled to an impartial tribunal which has no voice in the selection of the Defendant School Board and no control over its policies; if the first cause of action is denied, Plaintiffs will thenceforth be subject to a tribunal which has a direct and immediate political interest in any and all of the Plaintiffs' litigation before it. As litigants for whose protection the constitutional provision was in part designed, Plaintiffs are directly and personally affected by the disposition of the first cause of action.

VI. Plaintiff Stewart and her class of similarly situated teachers have standing to contest the validity of the appointment of the Defendant School Board, because Plaintiff teachers have a direct interest in the determination of their status.

Plaintiff Stewart and her class have many rights which may turn upon their being de jure employees of the public schools of the District of Columbia as contrasted with the status of de facto employees. Their interest in the existence or nonexistence of such rights clearly provide Plaintiffs with standing.[19]

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17. See Point II (B) of Plaintiffs' Supplemental Brief, pp.2-4.
18. See Point II (C) of Plaintiffs' Supplemental Brief, pp.5-7; and Point II of Plaintiffs' Brief.
19. Eg., People ex. rel. Malone v. Mueller, 66 N.E. 2nd 516 (Ill.)
Rogers v. Paul,, ___U.S.___, 86S.Ct.358 (1965);
Bradley v. School Bd., ___U.S.____, 86 S.Ct. 224 (1965).

Plaintiffs have a direct interest in the first cause of action because [illegible] personal rights, property, liberty and security. Moreover, only [illegible] a first instance an [illegible] decision permits or [illegible] [illegible] denial of their constitutional rights as [illegible] [illegible] of Article I-4 of the Constitution.

The [illegible] of the Constitution [illegible] the protection of [illegible] and [illegible] primary [illegible] of [illegible], personal and [illegible] [illegible] [illegible] interests and potential litigants.[17] In the [illegible] [illegible], appointment power of the three branches under Article 3, Clause 2, Section 2 do protect an independent, unbiased judiciary In other words, if the first cause of action is upheld, the Plaintiffs will thereafter be entitled to an impartial tribunal which has no voice in the selection of the Defendant School Board and no control over its policies; if the first cause of action is denied, Plaintiffs will thereafter be subjected to a tribunal which has a direct and immediate political interest in any and all of the Plaintiffs' litigation before it. As litigants for [illegible] Plaintiffs are directly and personally affected by the disposition of the first cause of action.

[illegible]

Plaintiff Tennant and her class have many rights which may term upon their being de jure employees of the public schools of the District of Columbia as contrasted with the status of de facto employees. Their interest in the existence or nonexistence of such rights clearly provide Plaintiffs with standing.[18]

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16. See Count II (D) of Plaintiffs' [illegible] [illegible].
17. See Count II (E) of Plaintiffs' [illegible] [illegible].
18. See Plaintiffs' Brief.
19. See, Powell vs. McCormack, [illegible] [illegible] (1).
[illegible] v. [illegible], [illegible], [illegible] (1966);
[illegible] v. [illegible], [illegible], [illegible] [illegible].

Plaintiff teachers possess the right to be hired by de jure officers for a de jure position. They also have the right not to be required by merely de facto officers to act unconstitutionally with the effect of helping preserve de factoracial segregation between schools and between classifications of pupils within schools of the District of Columbia.[20]

VII. Under the basic case of Frothingham v. Mellon[21] Plaintiffs as taxpayers of the District of Columbia have standing to bring this suit, including the first cause of action.

Frothingham squarely holds that taxpayers of the District possess standing to contestillegal actions of government bodies and officials. In Frothingham, the Court stated as follows:

> ....Bradfield v. Roberts, 175 U.S. 291, 295[22]. The case last cited came here from the Court of Appeals of the District of Columbia and the court sustained the right of the plaintiff to sue by treating the case as one directed against the District of Columbia, and therefore, subject to the rule, frequently stateddby this court, that resident taxpayers may sue to enjoin an illegal use of the moneys of ammunicipal corporation. Roberts v. Bradfield 12 App. D.C. 453, 459, 460. The interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate. It is upheld by a large number of state cases and is the rule of this court. Crampton v. Zabriskie, 101 U.S. 601, 609)

of

v.Zabrisk

I

In Crampton, the case cited above by the Court, the Court had earlier stated (at p.609):

> Of the right of resident tax-payers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county or the illegal creation of a debt which they in common with other property holders of the county may otherwise be compelled to pay, there is at this day, no serious question. The right has been recognized by the State courts in numerous cases; and from the nature of the powers exercised by municipal corporations, the great danger of their abuse and the

20. Rogers v. Paul, ___U.S.___, 86 S.Ct. 358 (1965); Bradley v. School Bd., ___U.S.___, 86 S.Ct. 224 (1965)

21. 226 U.S. 447 (1923)

22. This was a First Amendment establishment case dealing withpayments to a sectarian hospital. Standing of a taxpayer to sue was expressly upheld. In Bradfield, the question was the separation of church and state; here the question (or one phase of it) is the separation of powers.

Plaintiff teachers possess the right to be heard on the [illegible]

for a [illegible] position. They also have the right [illegible]

[illegible]

[illegible]

[illegible] of people within schools of the District of Columbia.[20]

VII. Under the [illegible] case of [illegible] v. [illegible][21] Plaintiffs as [illegible] of the District of Columbia have standing to bring this suit, [illegible] the first cause of action.

[illegible] expressly holds that taxpayers of the District possess standing to [illegible] actions of government [illegible] and officials.

In [illegible], the Court stated as follows:

> ...[illegible] v. [illegible], [illegible] U.S. [illegible][22]. The [illegible] came here from the Court of Appeals of the District of Columbia and the court [illegible] the right of the plaintiff to sue by treating the case as one [illegible] against the District of Columbia, and [illegible], subject to the rule, [illegible] this court, that resident taxpayers may sue to enjoin an illegal use of the moneys of a municipal corporation. [illegible] v. [illegible] [illegible] App. D.C. [illegible]. The interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate. It is upheld by a large number of state cases and is the rule of this court. [illegible] v. [illegible], [illegible] U.S. [illegible].

In Compton, the case cited above by the Court, the Court had earlier stated (at p.[illegible]):

> Of the right of resident taxpayers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county or the illegal creation of a debt which they in common with other property holders of the county may otherwise be compelled to pay, there is at this day no serious question. The right has been recognized by the State courts in numerous cases; and from the nature of the powers exercised by municipal corporations, the great danger of their abuse and the

20. [illegible] v. [illegible], ___ U.S. ___, [illegible] (19[illegible])
[illegible] v. [illegible], ___ U.S. ___, [illegible] (19[illegible])

21. [illegible] U.S. [illegible] ([illegible])

22. This was a First Amendment establishment clause [illegible] case [illegible] hospital. [illegible] In [illegible], the question was the expenditure of [illegible] for [illegible] in the [illegible].

and the necessity of prompt action to prevent irremediable injuries, it would seem eminently proper for courts of equity to interfere upon the application of the tax-payers' of alcounty to prevent the consummation of a wrong, when the officers of these corporations assume in exercise of their powers, to create burdens upon property-holders...

In essence, then, Plaintiffs as taxpayers of the District of Columbia possess standing to challenge the legality of the Defendant Board of Education which is unconstitutionally appointed and at most a de facto body, that is continually applying and reapplying and misapplying taxpayers' funds.

VIII. Plaintiffs of all potential parties, amesthe parties most directly and immediately affected by the constitutionality vel non of Sec. 31-101 of the D.C. Code.

More proper parties to challenge the constitutionality of 31-101 of the D.C. Code would be hard to conceive. Most assuredly the parents of the deprived group, i.e., Negro and low-income people, are most personally and directly affected by a determination of the constitutionality of Section 31-101 of the D.C. Code. A tribunal would have to be bling not to be aware that this issue has been a burning one in the District for the last several years and has reached a new intensity in the last few months. A holding that Plaintiffs lack standing in this case would preclude precisely those persons and classes most directly involved from securing judicial relief.

IX. Conclusions.

Plaintiffs respectfully submit that they possess more than adequate standing to litigate the first cause of action in this case.

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CERTIFICATE OF SERVICE

I, William M. Kunstler, an attorney for Plaintiffs, certify that I have this day served a copy of this brief on Attorneys for Defendants

CERTIFICATE OF SERVICE

I, William M. Kunstler, an attorney for Plaintiffs, certify that I have this day served a copy of this Motion to Intervene

IN THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Hobson et al.

v.

Hansen et al.

No. _____
No. _____

Hon. David Bazelon
Chief Judge, U.S. Court of Appeals for the District of Columbia Circuit
Chairman, Judicial Council of the Fifth Circuit

Hon. Maguire
Chief Judge, U.S. District Court for the District of Columbia

MOTION

Plaintiffs hereby move that a Circuit Judge be appointed to hear the above-styled case, now pending in the U.S. District Court for the District of Columbia, on the grounds that:

1. The District Judges of the U.S. District Court for the District of Columbia have a substantial interest in and connection with the case, in that by virtue of Sec. 31-101 of the D.C. Code Defendants in the above-styled case are subject to the direct control of said judges through their appointment and removal powers; and

2. The case calls into question the Constitutional validity of the power granted the District Judges of the U.S. District Court for the District of Columbia under Sec. 31-101 of the D.C. Code, all involving a substantial interest and connection with both the

subject-matter and Defendants in the case.

William M. Kinstler
Attorney for Plaintiffs

William L. Higgs/

Of Counsel

subject-matter and Defendants in the case.

William M. Kunstler
Attorney for Plaintiffs

William L. Higgs
Of Counsel